

**Calendar No. 777**

108TH CONGRESS  
2D SESSION

**S. 2605**

**[Report No. 108–389]**

To direct the Secretary of the Interior and the heads of other Federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin, Idaho, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 24, 2004

Mr. CRAIG (for himself and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

OCTOBER 7, 2004

Reported by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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**A BILL**

To direct the Secretary of the Interior and the heads of other Federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin, Idaho, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Snake River Water  
3 Rights Act of 2004”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

6 (1) to resolve some of the largest outstanding  
7 issues with respect to the Snake River Basin Adju-  
8 dication in Idaho in such a manner as to provide im-  
9 portant benefits to the United States, the State of  
10 Idaho, the Nez Perce Tribe, the allottees, and citi-  
11 zens of the State;

12 (2) to achieve a fair, equitable, and final settle-  
13 ment of all claims of the Nez Perce Tribe, its mem-  
14 bers, and allottees and the United States on behalf  
15 of the Tribe, its members, and allottees to the water  
16 of the Snake River Basin within Idaho;

17 (3) to authorize, ratify, and confirm the Agree-  
18 ment among the parties submitted to the Snake  
19 River Basin Adjudication Court and provide all par-  
20 ties with the benefits of the Agreement;

21 (4) to direct—

22 (A) the Secretary, acting through the Bu-  
23 reau of Reclamation, the Bureau of Land Man-  
24 agement, the Bureau of Indian Affairs, and  
25 other agencies; and

1           ~~(B)~~ the heads of other Federal agencies  
 2           authorized to execute and perform actions nec-  
 3           essary to carry out the Agreement;  
 4           to perform all of their obligations under the Agree-  
 5           ment and this Act; and

6           ~~(5)~~ to authorize the actions and appropriations  
 7           necessary for the United States to meet the obliga-  
 8           tions of the United States under the Agreement and  
 9           this Act.

10 **SEC. 3. DEFINITIONS.**

11       In this Act:

12           ~~(1)~~ AGREEMENT.—The term “Agreement”  
 13           means the document titled “Mediator’s Term Sheet”  
 14           dated April 20, 2004, and submitted on that date to  
 15           the SRBA Court in SRBA Consolidated Subcase  
 16           03–10022 and SRBA Consolidated Subcase 67–  
 17           13701, with all appendices to the document.

18           ~~(2)~~ ALLOTTEE.—The term “allottee” means a  
 19           person that holds a beneficial real property interest  
 20           in an Indian allotment that is—

21                   ~~(A)~~ located within the Nez Perce Reserva-  
 22                   tion; and

23                   ~~(B)~~ held in trust by the United States.

24           ~~(3)~~ CONSUMPTIVE USE RESERVED WATER  
 25           RIGHT.—The term “consumptive use reserved water

1 right” means the Federal reserved water right of  
2 50,000 acre-feet per year, as described in the Agree-  
3 ment, to be decreed to the Tribe and the allottees,  
4 with a priority date of 1855.

5 (4) PARTIES.—The term “parties” means the  
6 United States, the State, the Tribe, and any other  
7 entity or person that submitted, or joined in the sub-  
8 mission, of the Agreement to the SRBA Court on  
9 April 20, 2004.

10 (5) SECRETARY.—The term “Secretary” means  
11 the Secretary of the Interior.

12 (6) SNAKE RIVER BASIN.—The term “Snake  
13 River Basin” means the geographic area in the  
14 State described in paragraph 3 of the Commence-  
15 ment Order issued by the SRBA Court on November  
16 19, 1987.

17 (7) SPRINGS OR FOUNTAINS WATER RIGHT.—  
18 The term “springs or fountains water right” means  
19 the Tribe’s treaty right of access to and use of water  
20 from springs or fountains on Federal public land  
21 within the area ceded by the Tribe in the Treaty of  
22 June 9, 1863 (14 Stat. 647), as recognized under  
23 the Agreement.

24 (8) SRBA.—The term “SRBA” means the  
25 Snake River Basin Adjudication litigation before the

1 SRBA Court styled as In re Snake River Basin Ad-  
 2 judication, Case No. 39576.

3 (9) SRBA COURT.—The term “SRBA Court”  
 4 means the District Court of the Fifth Judicial Dis-  
 5 trict of the State of Idaho, In and For the County  
 6 of Twin Falls in re Snake River Basin Adjudication.

7 (10) STATE.—The term “State” means the  
 8 State of Idaho.

9 (11) TRIBE.—The term “Tribe” means the Nez  
 10 Perce Tribe.

11 **SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF**  
 12 **AGREEMENT.**

13 (a) IN GENERAL.—Except to the extent that the  
 14 Agreement conflicts with the express provisions of this  
 15 Act, the Agreement is approved, ratified, and confirmed.

16 (b) EXECUTION AND PERFORMANCE.—The Secretary  
 17 and the other heads of Federal agencies with obligations  
 18 under the Agreement shall execute and perform all ac-  
 19 tions, consistent with this Act, that are necessary to carry  
 20 out the Agreement.

21 **SEC. 5. BUREAU OF RECLAMATION WATER USE.**

22 (a) IN GENERAL.—As part of the overall implementa-  
 23 tion of the Agreement, the Secretary shall take such ac-  
 24 tions consistent with the Agreement, this Act, and water

1 law of the State as are necessary to carry out the Snake  
 2 River Flow Component of the Agreement.

3 ~~(b) MITIGATION FOR CHANGE OF USE OF WATER.—~~

4 ~~(1) AUTHORIZATION OF APPROPRIATIONS.—~~

5 There is authorized to be appropriated to the Sec-  
 6 retary \$2,000,000 for a 1-time payment to local gov-  
 7 ernments to mitigate for the change of use of water  
 8 acquired by the Bureau of Reclamation under sec-  
 9 tion III.C.6 of the Agreement.

10 ~~(2) DISTRIBUTION OF FUNDS.—~~Funds made  
 11 available under paragraph (1) shall be distributed by  
 12 the Secretary to local governments in accordance  
 13 with a plan provided to the Secretary by the State.

14 ~~(3) PAYMENTS.—~~Payments by the Secretary  
 15 shall be made on a pro rata basis as water rights  
 16 are acquired by the Bureau of Reclamation.

17 **SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.**

18 ~~(a) TRANSFER.—~~

19 ~~(1) IN GENERAL.—~~The Secretary shall transfer  
 20 land selected by the Tribe under paragraph (2) to  
 21 the Bureau of Indian Affairs to be held in trust for  
 22 the Tribe.

23 ~~(2) LAND SELECTION.—~~The land transferred  
 24 shall be selected by the Tribe from a list of parcels  
 25 of land managed by the Bureau of Land Manage-

ment that are available for transfer, as depicted on the map entitled “North Idaho BLM Land Eligible for Selection by the Nez Perce Tribe” dated May 2004, on file with the Director of the Bureau of Land Management, not including any parcel designated on the map as being on the Clearwater River or Lolo Creek.

(3) MAXIMUM VALUE.—The land selected by the Tribe for transfer shall be limited to a maximum value in total of not more than \$7,000,000, as determined by an independent appraisal of fair market value prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

(b) EXISTING RIGHTS AND USES.—

(1) IN GENERAL.—On any land selected by the Tribe under subsection (a)(2), any use in existence on the date of transfer under subsection (a) under a lease or permit with the Bureau of Land Management, including grazing, shall remain in effect until the date of expiration of the lease or permit, unless the holder of the lease or permit requests an earlier termination of the lease or permit, in which case the Secretary shall grant the request.

1           (2) AVAILABILITY OF AMOUNTS.—Amounts  
 2           that accrue to the United States under a lease or  
 3           permit described in paragraph (1) from sales, bo-  
 4           nuses, royalties, and rentals relating to any land  
 5           transferred to the Tribe under this section shall be  
 6           made available to the Tribe by the Secretary in the  
 7           same manner as amounts received from other land  
 8           held by the Secretary in trust for the Tribe.

9           (c) DATE OF TRANSFER.—No land shall be trans-  
 10          ferred to the Tribe under this section until the waivers  
 11          and releases under section 10 take effect.

12   **SEC. 7. WATER RIGHTS.**

13          (a) HOLDING IN TRUST.—

14           (1) IN GENERAL.—The consumptive use re-  
 15           served water right shall be held in trust by the  
 16           United States for the benefit of the Tribe and  
 17           allottees.

18           (2) SPRINGS OR FOUNTAINS WATER RIGHT.—  
 19           The springs or fountains water right of the Tribe  
 20           shall be held in trust by the United States for the  
 21           benefit of the Tribe.

22          (b) WATER CODE.—

23           (1) IN GENERAL.—The consumptive use re-  
 24           served water right shall be subject to section 7 of



the Act of February 8, 1887 (25 U.S.C. 381, 24 Stat. 390, chapter 119).

(2) ENACTMENT OF WATER CODE.—Not later than 3 years after the date of enactment of this Act, the Tribe shall enact a water code, subject to any applicable provision of law, that—

(A) manages, regulates, and controls the consumptive use reserved water right; and

(B) includes, subject to approval of the Secretary—

(i) a process by which an allottee, or any successor in interest to an allottee, may request and be provided with an allocation of water for irrigation use on allotted land of the allottee; and

(ii) a due process system for the consideration and determination of any request by an allottee, or any successor in interest to an allottee, for an allocation of water, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions.

(3) RIGHTS OF ALLOTTEES.—Any provision of the water code and any amendments to the water

1 code that affect the rights of the allottees shall be  
 2 subject to the approval of the Secretary, and no such  
 3 provision or amendment shall be valid until approved  
 4 by the Secretary.

5 (4) INTERIM ADMINISTRATION.—The Secretary  
 6 shall administer the consumptive use reserved water  
 7 right until such date as the water code described in  
 8 paragraph (2) has been enacted by the Tribe and  
 9 approved by the Secretary.

10 (c) SATISFACTION OF CLAIMS.—

11 (1) IN GENERAL.—The water rights and other  
 12 benefits granted or confirmed by the Agreement and  
 13 this Act shall be in full satisfaction of all claims for  
 14 water rights and injuries to water rights of the  
 15 allottees.

16 (2) SATISFACTION OF ENTITLEMENTS.—Any  
 17 entitlement to water of any allottee under Federal  
 18 law shall be satisfied out of the consumptive use re-  
 19 served water right.

20 (d) ABANDONMENT, FORFEITURE, OR NONUSE.—  
 21 The consumptive use reserved water right and the springs  
 22 or fountains water right shall not be subject to loss by  
 23 abandonment, forfeiture, or nonuse.

24 (e) LEASE OF WATER.—

1           (1) IN GENERAL.—The Tribe, without further  
 2           approval of the Secretary, may lease water to which  
 3           the Tribe is entitled under the consumptive use re-  
 4           served water right through any State water bank in  
 5           the same manner and subject to the same rules and  
 6           requirements that govern any other lessor of water  
 7           to the water bank.

8           (2) FUNDS.—Any funds accruing to the Tribe  
 9           from any lease under paragraph (1) shall be the  
 10          property of the Tribe, and the United States shall  
 11          have no trust obligation or other obligation to mon-  
 12          itor, administer, or account for any consideration re-  
 13          ceived by the Tribe under any such lease.

14 **SEC. 8. TRIBAL FUNDS.**

15          (a) DEFINITION OF FUND.—In this section, the term  
 16          “Fund” means—

17               (1) the Nez Perce Tribe Water and Fisheries  
 18               Fund established under subsection (b)(1); and

19               (2) the Nez Perce Tribe Domestic Water Sup-  
 20               ply Fund established under subsection (b)(2).

21          (b) ESTABLISHMENT.—There are established in the  
 22          Treasury of the United States—

23               (1) a fund to be known as the “Nez Perce  
 24               Tribe Water and Fisheries Fund”, to be used to pay  
 25               or reimburse costs incurred by the Tribe in acquir-

1       ing land and water rights; restoring or improving  
 2       fish habitat, or for fish production; agricultural de-  
 3       velopment; cultural preservation; water resource de-  
 4       velopment; or fisheries-related projects; and

5               (2) a fund to be known as the “Nez Perce Do-  
 6       mestic Water Supply Fund”, to be used to pay the  
 7       costs for design and construction of water supply  
 8       and sewer systems for tribal communities; including  
 9       a water quality testing laboratory.

10       (c) MANAGEMENT OF THE FUNDS.—The Secretary  
 11       shall manage the Funds; make investments from the  
 12       Funds; and make amounts available from the Funds for  
 13       distribution to the Tribe consistent with the American In-  
 14       dian Trust Fund Management Reform Act of 1994 (25  
 15       U.S.C. 4001 et seq.); this Act, and the Agreement.

16       (d) INVESTMENT OF THE FUNDS.—The Secretary  
 17       shall invest amounts in the Funds in accordance with—

18               (1) the Act of April 1, 1880 (25 U.S.C. 161;  
 19       21 Stat. 70; chapter 41);

20               (2) the first section of the Act of June 24,  
 21       1938 (25 U.S.C. 162a; 52 Stat. 1037; chapter 648);  
 22       and

23               (3) subsection (c).

24       (e) AVAILABILITY OF AMOUNTS FROM THE  
 25       FUNDS.—Amounts made available under subsection (h)

1 shall be available for expenditure or withdrawal only after  
 2 the waivers and releases under section 10 take effect.

3 ~~(f) EXPENDITURES AND WITHDRAWAL.—~~

4 ~~(1) TRIBAL MANAGEMENT PLAN.—~~

5 ~~(A) IN GENERAL.—~~The Tribe may with-  
 6 draw all or part of amounts in the Funds on  
 7 approval by the Secretary of a tribal manage-  
 8 ment plan as described in the American Indian  
 9 Trust Fund Management Reform Act of 1994  
 10 ~~(25 U.S.C. 4001 et seq.).~~

11 ~~(B) REQUIREMENTS.—~~In addition to the  
 12 requirements under the American Indian Trust  
 13 Fund Management Reform Act of 1994 ~~(25~~  
 14 ~~U.S.C. 4001 et seq.)~~, the tribal management  
 15 plan shall require that the Tribe spend any  
 16 amounts withdrawn from the Funds in accord-  
 17 ance with the purposes described in subsection  
 18 ~~(b).~~

19 ~~(C) ENFORCEMENT.—~~The Secretary may  
 20 take judicial or administrative action to enforce  
 21 the provisions of any tribal management plan to  
 22 ensure that any amounts withdrawn from the  
 23 Funds under the plan are used in accordance  
 24 with this Act and the Agreement.

1           ~~(D) LIABILITY.~~—If the Tribe exercises the  
 2 right to withdraw amounts from the Funds,  
 3 neither the Secretary nor the Secretary of the  
 4 Treasury shall retain any liability for the ex-  
 5 penditure or investment of the amounts.

6           ~~(2) EXPENDITURE PLAN.~~—

7           ~~(A) IN GENERAL.~~—The Tribe shall submit  
 8 to the Secretary for approval an expenditure  
 9 plan for any portion of the amounts made avail-  
 10 able under subsection ~~(h)~~ that the Tribe does  
 11 not withdraw under this subsection.

12           ~~(B) DESCRIPTION.~~—The expenditure plan  
 13 shall describe the manner in which, and the  
 14 purposes for which, amounts of the Tribe re-  
 15 maining in the Funds will be used.

16           ~~(C) APPROVAL.~~—On receipt of an expendi-  
 17 ture plan under subparagraph ~~(A)~~, the Sec-  
 18 retary shall approve the plan if the Secretary  
 19 determines that the plan is reasonable and con-  
 20 sistent with this Act and the Agreement.

21           ~~(D) ANNUAL REPORT.~~—For each Fund,  
 22 the Tribe shall submit to the Secretary an an-  
 23 nual report that describes all expenditures from  
 24 the Fund during the year covered by the report.

1       (g) NO PER CAPITA PAYMENTS.—No part of the  
 2 principal of the Funds, or of the income accruing in the  
 3 Funds, shall be distributed to any member of the Tribe  
 4 on a per capita basis.

5       (h) AUTHORIZATION OF APPROPRIATIONS.—There  
 6 are authorized to be appropriated—

7               (1) \$60,100,000 to the Nez Perce Tribe Water  
 8 and Fisheries Fund; and

9               (2) \$23,000,000 to the Nez Perce Tribe Do-  
 10 mestic Water Supply Fund.

11 **SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT**  
 12 **FUND.**

13       (a) ESTABLISHMENT OF FUND.—

14               (1) IN GENERAL.—There is established in the  
 15 Treasury of the United States a fund to be known  
 16 as the “Salmon and Clearwater River Basins Habi-  
 17 tat Fund” (referred to in this section as the  
 18 “Fund”), to be administered by the Secretary.

19               (2) ACCOUNTS.—There is established within the  
 20 Fund—

21                       (A) an account to be known as the “Nez  
 22 Perce Tribe Salmon and Clearwater River Ba-  
 23 sins Habitat Account”, which shall be adminis-  
 24 tered by the Secretary for use by the Tribe sub-  
 25 ject to the same provisions for management, in-

1 vestment, and expenditure as the funds estab-  
 2 lished by section 8; and

3 ~~(B)~~ an account to be known as the “Idaho  
 4 Salmon and Clearwater River Basins Habitat  
 5 Account”, which shall be administered by the  
 6 Secretary and provided to the State as provided  
 7 in the Agreement and this Act.

8 ~~(b) USE OF THE FUND.—~~

9 ~~(1) IN GENERAL.—~~The Fund shall be used to  
 10 supplement amounts made available under other law  
 11 for habitat protection and restoration in the Salmon  
 12 and Clearwater River basins, including projects and  
 13 programs intended to protect and restore listed fish  
 14 and their habitat in the Salmon and Clearwater ba-  
 15 sins, as specified in the Agreement and this Act.

16 ~~(2) NO ALLOCATION REQUIREMENT.—~~The use  
 17 of the Fund shall not be subject to the allocation  
 18 procedures under section 6(d)(1) of the Endangered  
 19 Species Act of 1973 (16 U.S.C. 1535(d)(1)).

20 ~~(3) RELEASE OF FUNDS.—~~The Secretary shall  
 21 release funds from the Clearwater River Basins  
 22 Habitat Account in accordance with section 6(d)(2)  
 23 of the Endangered Species Act (16 U.S.C.  
 24 1535(d)(2)).



1       (c) AVAILABILITY OF AMOUNTS IN THE FUND.—

2       Amounts made available under subsection (d) shall be  
3       available for expenditure or withdrawal only after the  
4       waivers and releases under section 10(a) take effect.

5       (d) AUTHORIZATION OF APPROPRIATIONS.—There  
6       are authorized to be appropriated—

7               (1) \$12,666,670 to the Nez Perce Tribe Salmon  
8       and Clearwater River Basins Habitat Account; and

9               (2) ~~\$25,333,330~~ to the Idaho Salmon and  
10       Clearwater River Basins Habitat Account.

11       **SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.**

12       (a) WAIVER AND RELEASE OF CLAIMS IN GEN-  
13       ERAL.—

14               (1) CLAIMS TO WATER RIGHTS; CLAIMS FOR IN-  
15       JURIES TO WATER RIGHTS OR TREATY RIGHTS.—Ex-  
16       cept as otherwise provided in this Act, the United  
17       States on behalf of the Tribe and the allottees, and  
18       the Tribe, waive and release—

19                       (A) all claims to water rights within the  
20       Snake River Basin (as defined in section 3(b));

21                       (B) all claims for injuries to such water  
22       rights; and

23                       (C) all claims for injuries to the treaty  
24       rights of the Tribe to the extent that such inju-  
25       ries result or resulted from flow modifications

or reductions in the quantity of water available that accrued at any time up to and including the effective date of the settlement, and any continuation thereafter of any such claims, against the State, any agency or political subdivision of the State, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation.

~~(2) CLAIMS BASED ON REDUCED WATER QUALITY OR REDUCTIONS IN WATER QUANTITY.~~—The United States on behalf of the Tribe and the allottees, and the Tribe, waive and release any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin against any party to the Agreement or this Act.

~~(3) NO FUTURE ASSERTION OF CLAIMS.~~—No water right claim that the Tribe or the allottees have asserted or may in the future assert outside the Snake River Basin shall require water to be supplied from the Snake River Basin to satisfy the claim.

~~(4) EFFECT OF WAIVERS AND RELEASES.~~—The waivers and releases by the United States and the Tribe under this subsection—

1           (A) shall be permanent and enforceable;  
2           and

3           (B) shall survive any subsequent termi-  
4           nation of any component of the settlement de-  
5           scribed in the Agreement or this Act.

6           ~~(5) EFFECTIVE DATE.~~—The waivers and re-  
7           leases under this subsection take effect on the date  
8           on which the Secretary causes to be published in the  
9           Federal Register a statement of findings that the ac-  
10          tions set forth in section IV.L of the Agreement—

11          (A) have been completed, including  
12          issuance of a judgment and decree by the  
13          SRBA court from which no further appeal may  
14          be taken; and

15          (B) have been determined by the United  
16          States on behalf of the Tribe and the allottees;  
17          the Tribe; and the State of Idaho to be con-  
18          sistent in all material aspects with the Agree-  
19          ment.

20          (b) WAIVER AND RELEASE OF CLAIMS AGAINST THE  
21          UNITED STATES.—

22          (1) IN GENERAL.—In consideration of perform-  
23          ance by the United States of all actions required by  
24          the Agreement and this Act, including the appro-  
25          priation of all funds authorized under sections 8(h)

1 and 9(d)(1), the Tribe shall execute a waiver and re-  
 2 lease of the United States from—

3 ~~(A)~~ all claims for water rights within the  
 4 Snake River Basin, injuries to such water  
 5 rights, or breach of trust claims for failure to  
 6 protect, acquire, or develop such water rights  
 7 that accrued at any time up to and including  
 8 the effective date determined under paragraph  
 9 ~~(2)~~;

10 ~~(B)~~ all claims for injuries to the Tribe's  
 11 treaty fishing rights, to the extent that such in-  
 12 juries result or resulted from reductions in the  
 13 quantity of water available in the Snake River  
 14 Basin;

15 ~~(C)~~ all claims of breach of trust for failure  
 16 to protect Nez Perce springs or fountains treaty  
 17 rights reserved in article VIII of the Treaty of  
 18 June 9, 1863 (14 Stat. 651); and

19 ~~(D)~~ all claims of breach of trust arising  
 20 out of the negotiation of or resulting from the  
 21 adoption of the Agreement.

22 ~~(2) EFFECTIVE DATE.~~—The waiver and release  
 23 contained in this subsection take effect on the date  
 24 on which the funds authorized under sections 8(h)

1 and 9(d)(1) of this Act have been appropriated as  
 2 authorized by this Act.

3 ~~(c) RETENTION OF RIGHTS.—~~

4 ~~(1) IN GENERAL.—~~The Tribe shall retain all  
 5 rights not specifically waived or released in the  
 6 Agreement or this Act.

7 ~~(2) DWORSHAK PROJECT.—~~Nothing in the  
 8 Agreement or this Act constitutes a waiver by the  
 9 Tribe of any claim against the United States relat-  
 10 ing to non-water-based injuries resulting from the  
 11 construction and operation of the Dworshak Project.

12 ~~(3) FUTURE ACQUISITION OF WATER RIGHTS.—~~  
 13 Nothing in the Agreement or this Act precludes the  
 14 Tribe, or the United States as trustee for the Tribe,  
 15 from purchasing or otherwise acquiring water rights  
 16 in the future to the same extent as any other entity  
 17 the State.

18 **SEC. 11. MISCELLANEOUS.**

19 ~~(a) GENERAL DISCLAIMER.—~~The parties expressly  
 20 reserve all rights not specifically granted, recognized, or  
 21 relinquished by the settlement described in the Agreement  
 22 or this Act.

23 ~~(b) DISCLAIMER REGARDING OTHER AGREEMENTS~~  
 24 ~~AND PRECEDENT.—~~

1           (1) IN GENERAL.—Except as expressly provided  
 2           in this Act, nothing in this Act amends, supersedes,  
 3           or preempts any State law, Federal law, Tribal law,  
 4           or interstate compact that pertains to the Snake  
 5           River or its tributaries.

6           (2) NO ESTABLISHMENT OF STANDARD.—Noth-  
 7           ing in this Act—

8                   (A) establishes any standard for the quan-  
 9                   tification of Federal reserved water rights or  
 10                  any other Indian water claims of any other In-  
 11                  dian tribes in any other judicial or administra-  
 12                  tive proceeding; or

13                   (B) limits the rights of the parties to liti-  
 14                  gate any issue not resolved by the Agreement or  
 15                  this Act.

16           (3) NO ADMISSION AGAINST INTEREST.—Noth-  
 17           ing in this Act constitutes an admission against in-  
 18           terest against any party in any legal proceeding.

19           (c) TREATY RIGHTS.—Nothing in the Agreement or  
 20           this Act impairs the treaty fishing, hunting, pasturing, or  
 21           gathering rights of the Tribe except to the extent expressly  
 22           provided in the Agreement or this Act.

23           (d) OTHER CLAIMS.—Nothing in the Agreement or  
 24           this Act quantifies or otherwise affects the water rights,  
 25           claims, or entitlements to water, or any other treaty right,

1 of any Indian tribe, band, or community other than the  
 2 Tribe.

3 ~~(c) RECREATION ON DWORSHAK RESERVOIR.—~~

4 ~~(1) IN GENERAL.—~~In implementing the provi-  
 5 sions of the Agreement and this Act relating to the  
 6 use of water stored in Dworshak Reservoir for flow  
 7 augmentation purposes, the heads of the Federal  
 8 agencies involved in the operational Memorandum of  
 9 Agreement referred to in the Agreement shall imple-  
 10 ment a flow augmentation plan beneficial to fish and  
 11 consistent with the Agreement.

12 ~~(2) CONTENTS OF PLAN.—~~The flow augmenta-  
 13 tion plan may include provisions beneficial to rec-  
 14 reational uses of the reservoir through maintenance  
 15 of the full level of the reservoir for prolonged periods  
 16 during the summer months.

17 ~~(f) JURISDICTION.—~~

18 ~~(1) NO EFFECT ON SUBJECT MATTER JURIS-~~  
 19 ~~DICTION.—~~Nothing in the Agreement or this Act re-  
 20 stricts, enlarges, or otherwise determines the subject  
 21 matter jurisdiction of any Federal, State, or Tribal  
 22 court.

23 ~~(2) CONSENT TO JURISDICTION.—~~The United  
 24 States consents to jurisdiction in a proper forum for

1 purposes of enforcing the provisions of the Agree-  
 2 ment.

3 ~~(3) EFFECT OF SUBSECTION.—Nothing in this~~  
 4 ~~subsection confers jurisdiction on any State court~~  
 5 ~~to—~~

6 ~~(A) enforce Federal environmental laws re-~~  
 7 ~~garding the duties of the United States; or~~

8 ~~(B) conduct judicial review of Federal~~  
 9 ~~agency action.~~

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Snake River Water*  
 12 *Rights Act of 2004”.*

13 **SEC. 2. PURPOSES.**

14 *The purposes of this Act are—*

15 *(1) to resolve some of the largest outstanding*  
 16 *issues with respect to the Snake River Basin Adju-*  
 17 *dication in Idaho in such a manner as to provide im-*  
 18 *portant benefits to the United States, the State of*  
 19 *Idaho, the Nez Perce Tribe, the allottees, and citizens*  
 20 *of the State;*

21 *(2) to achieve a fair, equitable, and final settle-*  
 22 *ment of all claims of the Nez Perce Tribe, its mem-*  
 23 *bers, and allottees and the United States on behalf of*  
 24 *the Tribe, its members, and allottees to the water of*  
 25 *the Snake River Basin within Idaho;*



(3) to authorize, ratify, and confirm the Agreement among the parties submitted to the Snake River Basin Adjudication Court and provide all parties with the benefits of the Agreement;

(4) to direct—

(A) the Secretary, acting through the Bureau of Reclamation, the Bureau of Land Management, the Bureau of Indian Affairs, and other agencies; and

(B) the heads of other Federal agencies authorized to execute and perform actions necessary to carry out the Agreement;

to perform all of their obligations under the Agreement and this Act; and

(5) to authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under the Agreement and this Act.

**SEC. 3. DEFINITIONS.**

*In this Act:*

(1) **AGREEMENT.**—The term “Agreement” means the document titled “Mediator’s Term Sheet” dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03–

1     *10022 and SRBA Consolidated Subcase 67–13701,*  
 2     *with all appendices to the document.*

3           (2) *ALLOTTEE.*—*The term “allottee” means a*  
 4     *person that holds a beneficial real property interest in*  
 5     *an Indian allotment that is—*

6                   (A) *located within the Nez Perce Reserva-*  
 7     *tion; and*

8                   (B) *held in trust by the United States.*

9           (3) *CONSUMPTIVE USE RESERVED WATER*  
 10     *RIGHT.*—*The term “consumptive use reserved water*  
 11     *right” means the Federal reserved water right of*  
 12     *50,000 acre-feet per year, as described in the Agree-*  
 13     *ment, to be decreed to the United States in trust for*  
 14     *the Tribe and the allottees, with a priority date of*  
 15     *1855.*

16           (4) *PARTIES.*—*The term “parties” means the*  
 17     *United States, the State, the Tribe, and any other en-*  
 18     *tity or person that submitted, or joined in the submis-*  
 19     *sion of, the Agreement to the SRBA Court on April*  
 20     *20, 2004.*

21           (5) *SECRETARY.*—*The term “Secretary” means*  
 22     *the Secretary of the Interior.*

23           (6) *SNAKE RIVER BASIN.*—*The term “Snake*  
 24     *River Basin” means the geographic area in the State*

1       *described in paragraph 3 of the Commencement Order*  
 2       *issued by the SRBA Court on November 19, 1987.*

3               (7) *SPRINGS OR FOUNTAINS WATER RIGHT.*—*The*  
 4       *term “springs or fountains water right” means the*  
 5       *Tribe’s treaty right of access to and use of water from*  
 6       *springs or fountains on Federal public land within*  
 7       *the area ceded by the Tribe in the Treaty of June 9,*  
 8       *1863 (14 Stat. 647), as recognized under the Agree-*  
 9       *ment.*

10              (8) *SRBA.*—*The term “SRBA” means the Snake*  
 11       *River Basin Adjudication litigation before the SRBA*  
 12       *Court styled as In re Snake River Basin Adjudica-*  
 13       *tion, Case No. 39576.*

14              (9) *SRBA COURT.*—*The term “SRBA Court”*  
 15       *means the District Court of the Fifth Judicial Dis-*  
 16       *trict of the State of Idaho, In and For the County of*  
 17       *Twin Falls in re Snake River Basin Adjudication.*

18              (10) *STATE.*—*The term “State” means the State*  
 19       *of Idaho.*

20              (11) *TRIBE.*—*The term “Tribe” means the Nez*  
 21       *Perce Tribe.*

1 **SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF**  
 2 **AGREEMENT.**

3 (a) *IN GENERAL.*—*Except to the extent that the Agree-*  
 4 *ment conflicts with this Act, the Agreement is approved,*  
 5 *ratified, and confirmed.*

6 (b) *EXECUTION AND PERFORMANCE.*—*The Secretary*  
 7 *and the other heads of Federal agencies with obligations*  
 8 *under the Agreement shall execute and perform all actions,*  
 9 *consistent with this Act, that are necessary to carry out the*  
 10 *Agreement.*

11 **SEC. 5. BUREAU OF RECLAMATION WATER USE.**

12 (a) *IN GENERAL.*—*As part of the overall implementa-*  
 13 *tion of the Agreement, the Secretary shall take such actions*  
 14 *consistent with the Agreement, this Act, and water law of*  
 15 *the State as are necessary to carry out the Snake River*  
 16 *Flow Component of the Agreement.*

17 (b) *MITIGATION FOR CHANGE OF USE OF WATER.*—

18 (1) *AUTHORIZATION OF APPROPRIATIONS.*—  
 19 *There is authorized to be appropriated to the Sec-*  
 20 *retary \$2,000,000 for a 1-time payment to local gov-*  
 21 *ernments to mitigate for the change of use of water*  
 22 *acquired by the Bureau of Reclamation under section*  
 23 *III.C.6 of the Agreement.*

24 (2) *DISTRIBUTION OF FUNDS.*—*Funds made*  
 25 *available under paragraph (1) shall be distributed by*

1        *the Secretary to local governments in accordance with*  
 2        *a plan provided to the Secretary by the State.*

3            (3) *PAYMENTS.—Payments by the Secretary*  
 4        *shall be made on a pro rata basis as water rights are*  
 5        *acquired by the Bureau of Reclamation.*

6    **SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.**

7            (a) *TRANSFER.—*

8            (1) *IN GENERAL.—The Secretary shall transfer*  
 9        *land selected by the Tribe under paragraph (2) to the*  
 10       *Bureau of Indian Affairs to be held in trust for the*  
 11       *Tribe.*

12           (2) *LAND SELECTION.—The land transferred*  
 13        *shall be selected by the Tribe from a list of parcels of*  
 14        *land managed by the Bureau of Land Management*  
 15        *that are available for transfer, as depicted on the map*  
 16        *entitled “North Idaho BLM Land Eligible for Selec-*  
 17        *tion by the Nez Perce Tribe” dated May 2004, on file*  
 18        *with the Director of the Bureau of Land Management,*  
 19        *not including any parcel designated on the map as*  
 20        *being on the Clearwater River or Lolo Creek.*

21           (3) *MAXIMUM VALUE.—The land selected by the*  
 22        *Tribe for transfer shall be limited to a maximum*  
 23        *value in total of not more than \$7,000,000, as deter-*  
 24        *mined by an independent appraisal of fair market*  
 25        *value prepared in accordance with the Uniform*

1     *Standards of Professional Appraisal Practice and the*  
 2     *Uniform Appraisal Standards for Federal Land Ac-*  
 3     *quisitions.*

4     ***(b) EXISTING RIGHTS AND USES.—***

5             ***(1) IN GENERAL.—****On any land selected by the*  
 6     *Tribe under subsection (a)(2), any use in existence on*  
 7     *the date of transfer under subsection (a) under a lease*  
 8     *or permit with the Bureau of Land Management, in-*  
 9     *cluding grazing, shall remain in effect until the date*  
 10    *of expiration of the lease or permit, unless the holder*  
 11    *of the lease or permit requests an earlier termination*  
 12    *of the lease or permit, in which case the Secretary*  
 13    *shall grant the request.*

14            ***(2) AVAILABILITY OF AMOUNTS.—****Amounts that*  
 15    *accrue to the United States under a lease or permit*  
 16    *described in paragraph (1) from sales, bonuses, royal-*  
 17    *ties, and rentals relating to any land transferred to*  
 18    *the Tribe under this section shall be made available*  
 19    *to the Tribe by the Secretary in the same manner as*  
 20    *amounts received from other land held by the Sec-*  
 21    *retary in trust for the Tribe.*

22            ***(c) DATE OF TRANSFER.—****No land shall be transferred*  
 23    *to the Bureau of Indian Affairs to be held in trust for the*  
 24    *Tribe under this section until the waivers and releases*  
 25    *under section 10(a) take effect.*

1       (d) *AUTHORIZATION OF APPROPRIATIONS.*—

2               (1) *IN GENERAL.*—*There is authorized to be ap-*  
 3       *propriated to the Secretary \$200,000 for 1-time pay-*  
 4       *ments to local governments to mitigate for the trans-*  
 5       *fer of land by the Bureau of Land Management to the*  
 6       *Tribe under section I.F of the Agreement.*

7               (2) *PAYMENTS.*—*Payments under paragraph (1)*  
 8       *shall be made on a pro rata basis as parcels of land*  
 9       *are acquired by the Tribe.*

10 **SEC. 7. WATER RIGHTS.**

11       (a) *HOLDING IN TRUST.*—

12               (1) *IN GENERAL.*—*The consumptive use reserved*  
 13       *water right shall—*

14                       (A) *be held in trust by the United States for*  
 15       *the benefit of the Tribe and allottees as set forth*  
 16       *in this section; and*

17                       (B) *be subject to section 7 of the Act of Feb-*  
 18       *ruary 8, 1887 (25 U.S.C. 381).*

19               (2) *SPRINGS OR FOUNTAINS WATER RIGHT.*—*The*  
 20       *springs or fountains water right of the Tribe shall be*  
 21       *held in trust by the United States for the benefit of*  
 22       *the Tribe.*

23               (3) *ALLOTTEES.*—*Allottees shall be entitled to a*  
 24       *just and equitable allocation of the consumptive use*  
 25       *reserved water right for irrigation purposes.*

1       (b) *WATER CODE*.—

2               (1) *ENACTMENT OF WATER CODE*.—Not later  
3       than 3 years after the date of enactment of this Act,  
4       the Tribe shall enact a water code, subject to any ap-  
5       plicable provision of law, that—

6               (A) manages, regulates, and controls the  
7       consumptive use reserved water right so as to al-  
8       locate water for irrigation, domestic, commercial,  
9       municipal, industrial, cultural, or other uses;  
10      and

11              (B) includes, subject to approval of the Sec-  
12      retary—

13              (i) a due process system for the consid-  
14      eration and determination of any request by  
15      an allottee, or any successor in interest to  
16      an allottee, for an allocation of such water  
17      for irrigation purposes on allotted land, in-  
18      cluding a process for an appeal and adju-  
19      dication of denied or disputed distribution  
20      of water and for resolution of contested ad-  
21      ministrative decisions; and

22              (ii) a process to protect the interests of  
23      allottees when entering into any lease under  
24      subsection (e).



1           (2) *SECRETARIAL APPROVAL.*—Any provision of  
 2           the water code and any amendments to the water code  
 3           that affect the rights of the allottees shall be subject  
 4           to approval by the Secretary, and no such provision  
 5           or amendment shall be valid until approved by the  
 6           Secretary.

7           (3) *INTERIM ADMINISTRATION.*—The Secretary  
 8           shall administer the consumptive use reserved water  
 9           right until such date as the water code described in  
 10          paragraph (2) has been enacted by the Tribe and the  
 11          Secretary has approved the relevant portions of the  
 12          water code.

13          (c) *EXHAUSTION OF REMEDIES.*—Before asserting any  
 14          claim against the United States under section 7 of the Act  
 15          of February 8, 1887 (25 U.S.C. 381) or other applicable  
 16          law, a claimant shall exhaust remedies available under the  
 17          Tribe's water code and Tribal law.

18          (d) *PETITION TO THE SECRETARY.*—Following ex-  
 19          haustion of remedies in accordance with subsection (c), a  
 20          claimant may petition the Secretary for relief.

21          (e) *SATISFACTION OF CLAIMS.*—

22               (1) *IN GENERAL.*—The water rights and other  
 23          benefits granted or confirmed by the Agreement and  
 24          this Act shall be in full satisfaction of all claims for

1       *water rights and injuries to water rights of the*  
 2       *allottees.*

3               (2) *SATISFACTION OF ENTITLEMENTS.—Any en-*  
 4       *titlement to water of any allottee under Federal law*  
 5       *shall be satisfied out of the consumptive use reserved*  
 6       *water right.*

7               (3) *COMPLETE SUBSTITUTION.—The water*  
 8       *rights, resources, and other benefits provided by this*  
 9       *Act are a complete substitution for any rights that*  
 10       *may have been held by, or any claims that may have*  
 11       *been asserted by, allottees within the exterior bound-*  
 12       *aries of the Reservation before the date of enactment*  
 13       *of this Act.*

14              (f) *ABANDONMENT, FORFEITURE, OR NONUSE.—The*  
 15       *consumptive use reserved water right and the springs or*  
 16       *fountains water right shall not be subject to loss by aban-*  
 17       *donment, forfeiture, or nonuse.*

18              (g) *LEASE OF WATER.—*

19                   (1) *IN GENERAL.—Subject to the water code, the*  
 20       *Tribe, without further approval of the Secretary, may*  
 21       *lease water to which the Tribe is entitled under the*  
 22       *consumptive use reserved water right through any*  
 23       *State water bank in the same manner and subject to*  
 24       *the same rules and requirements that govern any*  
 25       *other lessor of water to the water bank.*

1           (2) *FUNDS.*—*Any funds accruing to the Tribe*  
 2           *from any lease under paragraph (1) shall be the prop-*  
 3           *erty of the Tribe, and the United States shall have no*  
 4           *trust obligation or other obligation to monitor, ad-*  
 5           *minister, or account for any consideration received by*  
 6           *the Tribe under any such lease.*

7 **SEC. 8. TRIBAL FUNDS.**

8           (a) *DEFINITION OF FUND.*—*In this section, the term*  
 9           *“Fund” means—*

10           (1) *the Nez Perce Tribe Water and Fisheries*  
 11           *Fund established under subsection (b)(1); and*

12           (2) *the Nez Perce Tribe Domestic Water Supply*  
 13           *Fund established under subsection (b)(2).*

14           (b) *ESTABLISHMENT.*—*There are established in the*  
 15           *Treasury of the United States—*

16           (1) *a fund to be known as the “Nez Perce Tribe*  
 17           *Water and Fisheries Fund”, to be used to pay or re-*  
 18           *imburse costs incurred by the Tribe in acquiring land*  
 19           *and water rights, restoring or improving fish habitat,*  
 20           *or for fish production, agricultural development, cul-*  
 21           *tural preservation, water resource development, or*  
 22           *fisheries-related projects; and*

23           (2) *a fund to be known as the “Nez Perce Domes-*  
 24           *tic Water Supply Fund”, to be used to pay the costs*  
 25           *for design and construction of water supply and*

1        *sewer systems for tribal communities, including a*  
 2        *water quality testing laboratory.*

3        (c) *MANAGEMENT OF THE FUNDS.—The Secretary*  
 4        *shall manage the Funds, make investments from the Funds,*  
 5        *and make amounts available from the Funds for distribu-*  
 6        *tion to the Tribe consistent with the American Indian Trust*  
 7        *Fund Management Reform Act of 1994 (25 U.S.C. 4001 et*  
 8        *seq.), this Act, and the Agreement.*

9        (d) *INVESTMENT OF THE FUNDS.—The Secretary shall*  
 10       *invest amounts in the Funds in accordance with—*

11                (1) *the Act of April 1, 1880 (25 U.S.C. 161; 21*  
 12        *Stat. 70, chapter 41);*

13                (2) *the first section of the Act of June 24, 1938*  
 14        *(25 U.S.C. 162a; 52 Stat. 1037, chapter 648); and*

15                (3) *subsection (c).*

16        (e) *AVAILABILITY OF AMOUNTS FROM THE FUNDS.—*  
 17        *Amounts made available under subsection (h) shall be avail-*  
 18        *able for expenditure or withdrawal only after the waivers*  
 19        *and releases under section 10(a) take effect.*

20        (f) *EXPENDITURES AND WITHDRAWAL.—*

21                (1) *TRIBAL MANAGEMENT PLAN.—*

22                        (A) *IN GENERAL.—The Tribe may with-*  
 23        *draw all or part of amounts in the Funds on ap-*  
 24        *proval by the Secretary of a tribal management*  
 25        *plan as described in the American Indian Trust*

1       *Fund Management Reform Act of 1994 (25*  
2       *U.S.C. 4001 et seq.).*

3               *(B) REQUIREMENTS.—In addition to the*  
4       *requirements under the American Indian Trust*  
5       *Fund Management Reform Act of 1994 (25*  
6       *U.S.C. 4001 et seq.), the tribal management plan*  
7       *shall require that the Tribe spend any amounts*  
8       *withdrawn from the Funds in accordance with*  
9       *the purposes described in subsection (b).*

10              *(C) ENFORCEMENT.—The Secretary may*  
11       *take judicial or administrative action to enforce*  
12       *the provisions of any tribal management plan to*  
13       *ensure that any amounts withdrawn from the*  
14       *Funds under the plan are used in accordance*  
15       *with this Act and the Agreement.*

16              *(D) LIABILITY.—If the Tribe exercises the*  
17       *right to withdraw amounts from the Funds, nei-*  
18       *ther the Secretary nor the Secretary of the Treas-*  
19       *ury shall retain any liability for the expenditure*  
20       *or investment of the amounts.*

21       *(2) EXPENDITURE PLAN.—*

22              *(A) IN GENERAL.—The Tribe shall submit*  
23       *to the Secretary for approval an expenditure*  
24       *plan for any portion of the amounts made avail-*

1           *able under subsection (h) that the Tribe does not*  
 2           *withdraw under this subsection.*

3           (B) *DESCRIPTION.—The expenditure plan*  
 4           *shall describe the manner in which, and the pur-*  
 5           *poses for which, amounts of the Tribe remaining*  
 6           *in the Funds will be used.*

7           (C) *APPROVAL.—On receipt of an expendi-*  
 8           *ture plan under subparagraph (A), the Secretary*  
 9           *shall approve the plan if the Secretary deter-*  
 10          *mines that the plan is reasonable and consistent*  
 11          *with this Act and the Agreement.*

12          (D) *ANNUAL REPORT.—For each Fund, the*  
 13          *Tribe shall submit to the Secretary an annual*  
 14          *report that describes all expenditures from the*  
 15          *Fund during the year covered by the report.*

16          (g) *NO PER CAPITA PAYMENTS.—No part of the prin-*  
 17          *cipal of the Funds, or of the income accruing in the Funds,*  
 18          *shall be distributed to any member of the Tribe on a per*  
 19          *capita basis.*

20          (h) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
 21          *authorized to be appropriated—*

22               (1) *to the Nez Perce Tribe Water and Fisheries*  
 23          *Fund—*

24                       (A) *for fiscal year 2007, \$7,830,000;*

25                       (B) *for fiscal year 2008, \$4,730,000;*

- 1                   (C) for fiscal year 2009, \$7,380,000;  
 2                   (D) for fiscal year 2010, \$10,080,000;  
 3                   (E) for fiscal year 2011, \$11,630,000;  
 4                   (F) for fiscal year 2012, \$9,450,000; and  
 5                   (G) for fiscal year 2013, \$9,000,000; and  
 6           (2) to the Nez Perce Tribe Domestic Water Sup-  
 7       ply Fund—  
 8                   (A) for fiscal year 2007, \$5,100,000;  
 9                   (B) for fiscal year 2008, \$8,200,000;  
 10                  (C) for fiscal year 2009, \$5,550,000;  
 11                  (D) for fiscal year 2010, \$2,850,000; and  
 12                  (E) for fiscal year 2011, \$1,300,000.

13 **SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT**  
 14 **FUND.**

15       (a) *ESTABLISHMENT OF FUND.*—

16           (1) *IN GENERAL.*—There is established in the  
 17 Treasury of the United States a fund to be known as  
 18 the “Salmon and Clearwater River Basins Habitat  
 19 Fund” (referred to in this section as the “Fund”), to  
 20 be administered by the Secretary.

21           (2) *ACCOUNTS.*—There is established within the  
 22 Fund—

23                   (A) an account to be known as the “Nez  
 24 Perce Tribe Salmon and Clearwater River Ba-  
 25 sins Habitat Account”, which shall be adminis-

1        *tered by the Secretary for use by the Tribe sub-*  
 2        *ject to the same provisions for management, in-*  
 3        *vestment, and expenditure as the funds estab-*  
 4        *lished by section 8; and*

5                *(B) an account to be known as the “Idaho*  
 6        *Salmon and Clearwater River Basins Habitat*  
 7        *Account”, which shall be administered by the*  
 8        *Secretary and provided to the State as provided*  
 9        *in the Agreement and this Act.*

10        *(b) USE OF THE FUND.—*

11                *(1) IN GENERAL.—The Fund shall be used to*  
 12        *supplement amounts made available under any other*  
 13        *law for habitat protection and restoration in the*  
 14        *Salmon and Clearwater River Basins in Idaho, in-*  
 15        *cluding projects and programs intended to protect*  
 16        *and restore listed fish and their habitat in those ba-*  
 17        *sins, as specified in the Agreement and this Act.*

18                *(2) RELEASE OF FUNDS.—The Secretary shall*  
 19        *release funds from the Idaho Salmon and Clearwater*  
 20        *River Basins Habitat Account in accordance with*  
 21        *section 6(d)(2) of the Endangered Species Act (16*  
 22        *U.S.C. 1535(d)(2)).*

23                *(3) NO ALLOCATION REQUIREMENT.—The use of*  
 24        *the Fund shall not be subject to the allocation proce-*



1       dures under section 6(d)(1) of the Endangered Species  
2       Act of 1973 (16 U.S.C. 1535(d)(1)).

3       (c) *AVAILABILITY OF AMOUNTS IN THE FUND.*—  
4       Amounts made available under subsection (d) shall be  
5       available for expenditure or withdrawal only after the waiv-  
6       ers and releases under section 10(a) take effect.

7       (d) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
8       authorized to be appropriated—

9               (1) *to the Nez Perce Tribe Salmon and Clear-*  
10       *water River Basins Habitat Account, \$2,533,334 for*  
11       *each of fiscal years 2007 through 2011; and*

12              (2) *to the Idaho Salmon and Clearwater River*  
13       *Basins Habitat Account, \$5,066,666 for each of fiscal*  
14       *years 2007 through 2011.*

15   **SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.**

16       (a) *WAIVER AND RELEASE OF CLAIMS IN GENERAL.*—

17              (1) *CLAIMS TO WATER RIGHTS; CLAIMS FOR IN-*  
18       *JURIES TO WATER RIGHTS OR TREATY RIGHTS.*—*Ex-*  
19       *cept as otherwise provided in this Act, the United*  
20       *States on behalf of the Tribe and the allottees, and the*  
21       *Tribe, waive and release—*

22                   (A) *all claims to water rights within the*  
23               *Snake River Basin (as defined in section 3);*

24                   (B) *all claims for injuries to such water*  
25       *rights; and*

(C) all claims for injuries to the treaty rights of the Tribe to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available that accrued at any time up to and including the effective date of the settlement, and any continuation thereafter of any such claims, against the State, any agency or political subdivision of the State, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation.

(2) CLAIMS BASED ON REDUCED WATER QUALITY OR REDUCTIONS IN WATER QUANTITY.—The United States on behalf of the Tribe and the allottees, and the Tribe, waive and release any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin against any party to the Agreement.

(3) NO FUTURE ASSERTION OF CLAIMS.—No water right claim that the Tribe or the allottees have asserted or may in the future assert outside the Snake River Basin shall require water to be supplied from the Snake River Basin to satisfy the claim.

1           (4) *EFFECT OF WAIVERS AND RELEASES.*—*The*  
 2           *waivers and releases by the United States and the*  
 3           *Tribe under this subsection—*

4                     *(A) shall be permanent and enforceable; and*

5                     *(B) shall survive any subsequent termi-*  
 6                     *nation of any component of the settlement de-*  
 7                     *scribed in the Agreement or this Act.*

8           (5) *EFFECTIVE DATE.*—*The waivers and releases*  
 9           *under this subsection shall take effect on the date on*  
 10           *which the Secretary causes to be published in the Fed-*  
 11           *eral Register a statement of findings that the actions*  
 12           *set forth in section IV.L of the Agreement—*

13                     *(A) have been completed, including issuance*  
 14                     *of a judgment and decree by the SRBA court*  
 15                     *from which no further appeal may be taken; and*

16                     *(B) have been determined by the United*  
 17                     *States on behalf of the Tribe and the allottees, the*  
 18                     *Tribe, and the State of Idaho to be consistent in*  
 19                     *all material aspects with the Agreement.*

20           (b) *WAIVER AND RELEASE OF CLAIMS AGAINST THE*  
 21           *UNITED STATES.—*

22                     (1) *IN GENERAL.*—*In consideration of perform-*  
 23                     *ance by the United States of all actions required by*  
 24                     *the Agreement and this Act, including the appropri-*  
 25                     *ation of all funds authorized under sections 8(h) and*

1       9(d)(1), the Tribe shall execute a waiver and release  
2       of the United States from—

3               (A) all claims for water rights within the  
4       Snake River Basin, injuries to such water rights,  
5       or breach of trust claims for failure to protect,  
6       acquire, or develop such water rights that ac-  
7       crued at any time up to and including the effec-  
8       tive date determined under paragraph (2);

9               (B) all claims for injuries to the Tribe's  
10       treaty fishing rights, to the extent that such inju-  
11       ries result or resulted from reductions in the  
12       quantity of water available in the Snake River  
13       Basin;

14              (C) all claims of breach of trust for failure  
15       to protect Nez Perce springs or fountains treaty  
16       rights reserved in article VIII of the Treaty of  
17       June 9, 1863 (14 Stat. 651); and

18              (D) all claims of breach of trust arising out  
19       of the negotiation of or resulting from the adop-  
20       tion of the Agreement.

21       (2) *EFFECTIVE DATE.*—

22              (A) *IN GENERAL.*—The waiver and release  
23       contained in this subsection shall take effect on  
24       the date on which the amounts authorized under  
25       sections 8(h) and 9(d)(1) are appropriated.

1                   (B) *PERIODS OF LIMITATION; EQUITABLE*  
2                   *CLAIMS.—*

3                   (i) *IN GENERAL.—All periods of limi-*  
4                   *tation and time-based equitable defenses ap-*  
5                   *plicable to the claims set forth in paragraph*  
6                   *(1) are tolled for the period between the date*  
7                   *of enactment of this Act until the earlier*  
8                   *of—*

9                   *(I) the date on which the amounts*  
10                  *authorized under sections 8(h) and*  
11                  *9(d)(1) are appropriated; or*

12                  *(II) October 1, 2017.*

13                  (ii) *EFFECT OF SUBPARAGRAPH.—This*  
14                  *subparagraph neither revives any claim nor*  
15                  *tolls any period of limitation or time-based*  
16                  *equitable defense that may have expired be-*  
17                  *fore the date of enactment of this Act.*

18                  (3) *DEFENSE.—The making of the amounts of*  
19                  *appropriations authorized under sections 8(h) and*  
20                  *9(d)(1) shall constitute a complete defense to any*  
21                  *claim pending in any court of the United States on*  
22                  *the date on which the appropriations are made.*

23                  (c) *RETENTION OF RIGHTS.—*

1           (1) *IN GENERAL.*—*The Tribe shall retain all*  
 2           *rights not specifically waived or released in the Agree-*  
 3           *ment or this Act.*

4           (2) *DWORSHAK PROJECT.*—*Nothing in the Agree-*  
 5           *ment or this Act constitutes a waiver by the Tribe of*  
 6           *any claim against the United States resulting from*  
 7           *the construction and operation of the Dworshak*  
 8           *Project (Project PWI 05090), other than those speci-*  
 9           *fied in subparagraphs (A) and (B) of subsection*  
 10          *(b)(1).*

11          (3) *FUTURE ACQUISITION OF WATER RIGHTS.*—  
 12          *Nothing in the Agreement or this Act precludes the*  
 13          *Tribe or allottees, or the United States as trustee for*  
 14          *the Tribe or allottees, from purchasing or otherwise*  
 15          *acquiring water rights in the future to the same ex-*  
 16          *tent as any other entity in the State.*

17 **SEC. 11. MISCELLANEOUS.**

18          (a) *GENERAL DISCLAIMER.*—*The parties expressly re-*  
 19          *serve all rights not specifically granted, recognized, or relin-*  
 20          *quished by the settlement described in the Agreement or this*  
 21          *Act.*

22          (b) *DISCLAIMER REGARDING OTHER AGREEMENTS*  
 23          *AND PRECEDENT.*—

24               (1) *IN GENERAL.*—*Subject to section 9(b)(3),*  
 25          *nothing in this Act amends, supersedes, or preempts*

1        *any State law, Federal law, Tribal law, or interstate*  
 2        *compact that pertains to the Snake River Basin.*

3            (2) *NO ESTABLISHMENT OF STANDARD.—Nothing*  
 4        *in this Act—*

5            (A) *establishes any standard for the quan-*  
 6        *tification of Federal reserved water rights or any*  
 7        *other Indian water claims of any other Indian*  
 8        *tribes in any other judicial or administrative*  
 9        *proceeding; or*

10          (B) *limits the rights of the parties to liti-*  
 11        *gate any issue not resolved by the Agreement or*  
 12        *this Act.*

13          (3) *NO ADMISSION AGAINST INTEREST.—Nothing*  
 14        *in this Act constitutes an admission against interest*  
 15        *against any party in any legal proceeding.*

16          (c) *TREATY RIGHTS.—Nothing in the Agreement or*  
 17        *this Act impairs the treaty fishing, hunting, pasturing, or*  
 18        *gathering rights of the Tribe except to the extent expressly*  
 19        *provided in the Agreement or this Act.*

20          (d) *OTHER CLAIMS.—Nothing in the Agreement or this*  
 21        *Act quantifies or otherwise affects the water rights, claims,*  
 22        *or entitlements to water, or any other treaty right, of any*  
 23        *Indian tribe, band, or community other than the Tribe.*

24          (e) *RECREATION ON DWORSHAK RESERVOIR.—*

1           (1) *IN GENERAL.*—*In implementing the provi-*  
 2           *sions of the Agreement and this Act relating to the use*  
 3           *of water stored in Dworshak Reservoir for flow aug-*  
 4           *mentation purposes, the heads of the Federal agencies*  
 5           *involved in the operational Memorandum of Agree-*  
 6           *ment referred to in the Agreement shall implement a*  
 7           *flow augmentation plan beneficial to fish and con-*  
 8           *sistent with the Agreement.*

9           (2) *CONTENTS OF PLAN.*—*The flow augmentation*  
 10          *plan may include provisions beneficial to recreational*  
 11          *uses of the reservoir through maintenance of the full*  
 12          *level of the reservoir for prolonged periods during the*  
 13          *summer months.*

14          (f) *JURISDICTION.*—

15               (1) *NO EFFECT ON SUBJECT MATTER JURISDIC-*  
 16               *TION.*—*Nothing in the Agreement or this Act restricts,*  
 17               *enlarges, or otherwise determines the subject matter*  
 18               *jurisdiction of any Federal, State, or Tribal court.*

19               (2) *CONSENT TO JURISDICTION.*—*The United*  
 20               *States consents to jurisdiction in a proper forum for*  
 21               *purposes of enforcing the provisions of the Agreement.*

22               (3) *EFFECT OF SUBSECTION.*—*Nothing in this*  
 23               *subsection confers jurisdiction on any State court*  
 24               *to—*



- 1                   (A) *enforce Federal environmental laws re-*  
2                   *garding the duties of the United States; or*  
3                   (B) *conduct judicial review of Federal agen-*  
4                   *cy action.*

Calendar No. 777

108TH CONGRESS  
2D Session

**S. 2605**

[Report No. 108-389]

**A BILL**

To direct the Secretary of the Interior and the heads of other Federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin, Idaho, and for other purposes.

OCTOBER 7, 2004

Reported with an amendment